

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RALPH D. BRISCOE,

Petitioner

v.

//

CIVIL ACTION NO. 1:08CV197
(Judge Keeley)

KUMA DEBOO, Warden

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On August 29, 2008, pro se petitioner, Ralph D. Briscoe, ("Briscoe") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 seeking release from incarceration. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a Report and Recommendation ("R&R") in accordance with Local Rule of Prisoner Litigation 83.09.

On December 29, 2008, the respondent filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment asserting that Briscoe failed to exhaust his administrative remedies prior to filing suit. On January 30, 2009, Magistrate Judge Kaull issued a Roseboro notice advising Briscoe of his right to file a response to the motion. On March 12, 2009, Magistrate Judge Kaull granted Briscoe's request for additional time and directed him to file his response on or before March 30, 2009. The Court notes that Briscoe did not file a response.

On April 8, 2009, Magistrate Judge Kaull issued an R&R recommending that this Court deny the respondent's Motion to

ORDER ADOPTING REPORT AND RECOMMENDATION

Dismiss, or in the Alternative, Motion for Summary Judgment (dkt. no. 12) and dismiss the petition without prejudice as moot because Briscoe was released from imprisonment on March 12, 2009 and therefore received the relief sought in his petition.

The R&R also specifically warned that failure to object to it would result in the waiver of any appellate rights on this issue. Nevertheless, Briscoe failed to file any objections.¹ Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 21), **DENIES** the respondent's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (dkt. no. 12), and **DISMISSES** this case **WITHOUT PREJUDICE** as moot. The Court **ORDERS** the case **STRICKEN** from the Court's docket.

The Court directs the Clerk to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested, and to transmit copies of this Order to counsel of record.

Dated: May 22, 2009.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Briscoe's failure to object to the R&R not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).